



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/167554

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 25, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Portage County Department of Human Services in regard to FoodShare benefits (FS), a telephone hearing was held on August 19, 2015.

The issue for determination is whether the respondent correctly determined an overpayment of FS benefits to the petitioner.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

I

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]  
Portage County Department of Human Services  
817 Whiting Avenue  
Stevens Point, WI 54481-5292

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Wood County.
2. Petitioner is married to MS, and they received FS benefits during the periods of January 1, 2012 – March 31, 2012, October 1, 2012 – December 31, 2012, June 1, 2013 – June 30, 2012, and October 1, 2014 – October 31, 2014.

3. MS was employed during the time periods identified in Finding of Fact no. 2, above.
4. Sometime prior to February 26, 2015, the respondent was notified of a State Wage Discrepancy, which identified a discrepancy between the income claimed by petitioner's household for public assistance, and the income paid by MS' employer(s).
5. Petitioner was paid a base salary plus commission.
6. Income verifications were sent by the respondent as part of its investigation into the wage reporting discrepancy, but not verifications were returned.
7. By notices dated July 2, 2015, the respondent advised the petitioner that it had established the following FS overpayment claims:
  - [REDACTED] January 1, 2012 – March 31, 2012 \$ 432.00
  - [REDACTED] October 1, 2012 – October 31, 2012 \$ 363.00
  - [REDACTED] June 1, 2013 – June 30, 2012 \$ 481.00
  - [REDACTED] October 1, 2014 – December 31, 2014 \$1,533.00
8. On July 25, 2015, the petitioner filed the instant appeal contesting the overpayment.

### **DISCUSSION**

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error").<sup>7</sup> C.F.R. § 273.18(b), see also, FoodShare Wisconsin Handbook, § 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also, FS Handbook, § 7.3.1.9.

The agency alleges that this overpayment results from the petitioner's failure to accurately report his earned income at the time of application and renewal as well as his failure to report income exceeding 130% federal poverty level (FPL). Specifically, the agency alleges the petitioner did not report MS' commissions and his income was therefore not accurately budgeted in determining the household's eligibility and FS allotments. Because no verifications were received the respondent averaged MS' quarterly reported income in order to establish his monthly income. The respondent noted that the use of State Wage Match income figures is directed by State FS Policy:

In determining overpayments based on income, the income must be verified by either the member, employer or with any other reasonable documentary evidence. When all attempts to verify income have been unsuccessful, the best available information must be used. When the worker is unable to obtain verification of earned income through the member or employer, and there is no other information available, information obtained through a SWICA match must be used for purposes of calculating the FoodShare overpayment.

*DHS Operations Memo, DHS 15-11, 4/6/2015.*

At hearing the petitioner was unable to provide any evidence to refute the respondent's calculations or liability determination. Petitioner and MS asserted that their hands were tied due to the fact that MS' employer in 2012, is no longer in business. While those records may indeed be unobtainable, the petitioner has provided no other argument that could serve as a rebuttal of the monthly income averages utilized by the respondent. Without something specific to rely upon, I find it impossible to overturn the

respondent's determination here. I would entertain a Rehearing Request if the petitioner is able to provide any income information that would call into question the respondent's determination of and application of MS' monthly average income.

### CONCLUSIONS OF LAW

The respondent has correctly established the following FS overpayments to petitioner:

- [REDACTED] January 1, 2012 – March 31, 2012 \$ 432.00
- [REDACTED] October 1, 2012 – October 31, 2012 \$ 363.00
- [REDACTED] June 1, 2013 – June 30, 2012 \$ 481.00
- [REDACTED] October 1, 2014 – December 31, 2014 \$1,533.00

**THEREFORE, it is**

### ORDERED

That petitioner's appeal is hereby dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

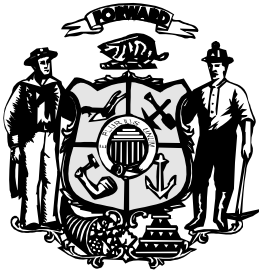
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 22nd day of September, 2015

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\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 22, 2015.

Portage County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability